

TREASURER OF STATE[781]

Adopted and Filed

Pursuant to the authority of Iowa Code section 12B.10C, the Treasurer of State hereby amends Chapter 15, “Required Public Funds Custodial Agreement Provisions,” Iowa Administrative Code.

These amendments are necessary to comply with law and to reflect changes in market practice.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 19, 2014, as **ARC 1383C**. No public comment was received. These amendments are identical to the amendments published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 12B.

These amendments will become effective June 18, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 781—15.1(12B) as follows:

781—15.1(12B) Scope.

15.1(1) Iowa Code section 12B.10C requires the treasurer of state to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. A As used in this chapter, “public funds custodial agreement” is means any public funds custodial agreement as defined in Iowa Code section 12B.10C as any contractual agreement pursuant to which one or more persons including, but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments.

15.1(2) ~~These rules~~ This chapter shall apply to any public unit, as defined in 781—Chapter 13, which uses a public funds custodial agreement for or relating to the investment of public funds. ~~Public~~ As used in this chapter, “public funds” are means public funds as defined in Iowa Code section 12C.1(2) “b” as moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in Iowa Code section 12C.1(1); a legal or administrative entity created pursuant to Iowa Code chapter 28E; or an electric power agency as defined in Iowa Code section 28F.2.

15.1(3) ~~A public unit may only enter into a contractual arrangement pursuant to which a person is authorized to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments (including the safekeeping of investments owned by a public unit) if that person is the trust or safekeeping department of a national or state bank located in the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa public funds custodial agreement if the custodian is a state or national bank that is located in the state of Iowa and has a safekeeping or trust department. Provided, however Notwithstanding the foregoing, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal or state laws. Each public unit whose investments involve the use of that enters into a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 781—15.2(12B) of this chapter or substantially equivalent provisions.~~

15.1(4) ~~Investments of public~~ Public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness are not subject to ~~these rules~~ this chapter.

~~15.1(5)~~ This chapter does not apply to those entities described in Iowa Code section 12B.10C(4) or to any other entities that may otherwise be exempted by law. ~~The public safety peace officers' retirement system governed by Iowa Code chapter 97A, the Iowa public employees' retirement system governed by Iowa Code chapter 97B, investments by the Iowa finance authority governed by Iowa Code chapter 16, the state fire and police retirement system governed by Iowa Code chapter 411, and the judicial retirement system governed by Iowa Code chapter 602, article 9, are not subject to these rules. These rules also do~~ This chapter does not apply to public funds custodial agreements entered into by the treasurer of state when such agreements are on behalf of any of the entities specified in this section the aforementioned entities.

~~15.1(6)~~ These rules do This chapter does not apply to custodial agreements between an open-end management investment company registered with the federal Securities and Exchange Commission under the federal Investment Company Act of 1940, 15 U.S.C. Sec. 80(a) and a custodian bank.

~~15.1(7)~~ These rules do This chapter does not apply to any custodial agreements entered into by a public unit or the treasurer of state for the purposes of securing public funds deposits under Iowa Code chapter 12C.

~~15.1(8)~~ These rules do This chapter does not apply to Treasury Direct accounts established by a public unit with a federal reserve bank for the purpose of making direct purchases of United States Treasury bills, notes or bonds.

ITEM 2. Amend rule 781—15.2(12B) as follows:

781—15.2(12B) Required provisions for inclusion in public funds custodial agreements. All public funds custodial agreements shall be in writing and shall include the following provisions:

~~15.2(1)~~ The custodian shall represent and warrant that ~~it lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa, unless such a custodian is located out of state and is used by the treasurer of state for purposes permitted in Iowa Code section 12C.4, and that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.~~

~~15.2(2)~~ The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, reporting, and securities valuation services.

~~15.2(3)~~ The custodian shall agree to provide the public unit with ~~receipts, advices or other written confirmation or acknowledgment of its custody, on behalf of the public unit, of all assets delivered to it for the account of the public unit and subject to the public funds custodial agreement.~~

~~15.2(4)~~ The custodian shall agree to segregate the public funds fund's assets ~~separate from bank the custodian's own assets and to maintain records adequate to describe the fiduciary capacity of the custodian and the public unit's ownership of or beneficial interest in the assets by the public unit held by the custodian.~~

~~15.2(5)~~ The custodian shall agree to maintain adequate records regarding a description of the assets, all receipts, deliveries and locations of the assets, together with a current inventory thereof, all purchases and sales, all receipts and disbursements of cash and all debits and credits pertaining to transactions relating to the assets, including but not limited to interest payments. The custodian shall agree to conduct periodic inspections in order to verify the accuracy of the inventory, including the securities, if any, held by a subcustodian.

~~15.2(6)~~ ~~15.2(5)~~ The custodian shall agree that all records of investment transactions, documentation, orders and reports, whether in written or machine-readable form, relating to the public funds custodial agreement and the services provided thereunder, regardless of who performs the services, shall be considered records of the public unit and open to inspection and examination by the public unit, its employees and its designees. To the extent records are maintained by others, the custodian shall agree to obtain from the other person an identical right to examination and inspection of the records and to obtain the information and records upon request of the public unit and to enforce its rights in order to obtain any records held by another person. The custodian shall agree to make all such records available

~~upon reasonable request for inspection and audit by the public unit, its employees or designees, and to allow these records or excerpts of these records to be copied and removed to facilitate the audit or to comply with public records requirements~~ to maintain and make available to the public unit, its employees and its designees accurate, current, and complete records that sufficiently and properly document the custodian's performance under the public funds custodial agreement, including records that document all fees and other amounts charged and all transactions occurring during the term of the agreement. The custodian shall, at a minimum, agree to allow the public unit or its designees, at no charge, to access, examine and audit any directly pertinent records of the custodian relating to or created as a result of the public funds custodial agreement.

~~15.2(7)~~ 15.2(6) If the custodian proposes to use a subcustodian ~~or other agent~~ to perform any services in connection with the public funds custodial agreement, the custodian shall agree ~~that it shall be responsible for the acts or omissions of any subcustodians or other agent used as though the acts and omissions of any subcustodian or agent were the acts and omissions of the custodian to take appropriate action to recover losses incurred by the public unit as a result of the acts or omissions of any subcustodian.~~

~~15.2(8)~~ 15.2(7) The custodian shall agree that it will receive all assets purchased by or for the public unit from the persons through or from whom the same were purchased, and only upon receipt thereof (delivery versus payment basis) pay, out of assets held on account of the public unit, the total amount payable on the purchase as set forth in the instructions received by the custodian settle all transactions on a payment-versus-delivery settlement basis except those specifically exempted in the agreement or unless such settlement is not market practice or unless otherwise directed by the public unit. ~~The custodian shall agree to secure possession of all investment instruments that are the subject of or are the underlying obligations for any repurchase agreement.~~

~~15.2(9)~~ The custodian shall agree that it will transfer assets for sale pursuant to instructions delivered to the custodian only upon receipt of the total amount payable to the public unit in connection with the settlement of the transaction, provided that the same conforms to the total amount payable to the public unit as shown in the instructions with respect to such sale. No assets may be delivered out of the account of the public unit without full payment (no "free deliveries" of investment securities shall be permitted).

~~15.2(10)~~ 15.2(8) If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

~~15.2(11)~~ 15.2(9) The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by ~~the treasurer of the public unit, or other employees designated by the treasurer~~ its employees or designees, consistent with the internal controls established by the public unit.

~~15.2(12)~~ 15.2(10) The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. ~~At a minimum, these~~ These procedures must ~~certify~~ specify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

~~15.2(13)~~ 15.2(11) ~~At a minimum, the~~ The public funds custodial agreement shall require the custodian to furnish ~~the following reports to the public unit: A~~ a monthly report describing in

satisfactory detail the inventory of the account and transaction history during the preceding month; and other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation; and ~~written notice to the public unit within 30 days of receipt of all communications from the person performing the audit of the custodian or any regulatory authority of a material weakness in internal control structure, or regulatory orders or sanctions against the custodian, with regard to the services being performed under the public funds custodial agreement.~~ In addition, the custodian shall, to the extent not prohibited by law, provide written notice to the public unit (within a time period acceptable to the public unit) of the custodian's receipt of an audit by an independent or internal auditor or regulatory authority which indicates that there is a material weakness in the custodian's internal control structure or receipt of a regulatory order or sanction which relates to the type of work performed under the public funds custodial agreement. The custodian shall include in the written notice a detailed description of the comment or sanction and any curative measures which the custodian proposes to take in response thereto.

~~15.2(14)~~ The custodian shall agree to furnish to the public unit the audited financial statements and related report on internal control structure as required by Iowa Code section 11.6(1) "b"(2) as amended and recodified from time to time.

~~15.2(15)~~ 15.2(12) The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

~~15.2(16)~~ 15.2(13) The custodian shall agree to comply with all applicable federal, state, and local laws and regulations and all applicable laws and administrative rules of the state of Iowa, including all amendments to laws, regulations and rules adopted following the execution and delivery of the when performing within the scope of the public funds custodial agreement at any time during the term of the public funds custodial agreement.

~~15.2(17)~~ The public funds custodial agreement shall require that all investments shall be made in accordance with the laws of the state of Iowa, as then in effect.

~~15.2(18)~~ 15.2(14) At a minimum, the custodian shall agree to exercise the standard of care expected of a prudent professional custodian of public funds in holding, maintaining and servicing the securities public fund's assets and cash and in performing the custodian's duties and obligations under the public funds custodial agreement.

~~15.2(19)~~ The provisions described in these rules shall not be limited or avoided by other contractual provisions in the public funds custodial agreement.

~~15.2(20)~~ Any provisions limiting the liability of the custodian shall not relieve the custodian of liability as a result of its own negligence, lack of good faith or willful misconduct.

~~15.2(21)~~ If the custodian intends to perform services pursuant to the public funds custodial agreement in its safekeeping department, the custodian shall represent and warrant that it performs similar services for other customers in its safekeeping department.

ITEM 3. Amend rule 781—15.3(12B) as follows:

781—15.3(12B) Optional provisions which public units should consider. The provisions set forth in rule 781—15.2(12B) are minimum requirements and are not exclusive. A public unit should determine whether the services performed by the custodian (except for any custodian hired by the treasurer of state pursuant to Iowa Code section 12C.4) pursuant to the public funds custodial agreement will be performed in the safekeeping department or the trust department and, based upon the advice of its counsel, should also consider other appropriate or more favorable provisions that may customarily be included in a public funds custodial agreement. Such things include, but are not limited to: additional representations and warranties; agreements or covenants pertaining to insurance and fidelity bond of the custodian and its employees; permitted use of subcustodians; adequate description of fees and expenses and billing procedures; the requirement of additional reports, including advices of transactions; conditions to the effectiveness of the public funds custodial agreement regarding deliveries of related documents and certificates; a higher standard of care; the ability of the public unit to terminate the public funds custodial agreement on a short-term basis without cause; and indemnification and default provisions, including recovery of attorneys' fees.

ITEM 4. Amend rule 781—15.5(12B) as follows:

781—15.5(12B) Implementation deadline. Public units shall have until ~~January 31, 1993~~ July 1, 2015, to incorporate the required provisions contained in rule 781—15.2(12B) into existing public funds custodial agreements. Any new public funds custodial agreement executed after the effective date of these rules shall contain the provisions of rule 781—15.2(12B).

[Filed 4/25/14, effective 6/18/14]

[Published 5/14/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/14.